

### **REMARKS**

The present submission and the accompanying Request for Continued Examination is intended to be fully compliant with the rules set forth in 37 C.F.R. § 1.114. Favorable reconsideration and allowance of the application is respectfully requested.

In the Final Office Action mailed September 11, 2007, the Examiner noted claims 1, 3-9, 11-49 and 51-71 are pending and rejected. Subsequently, the Applicants have amended claims 1, 9, 16, 28, 39, 49 and 60. The Applicants assert no new matter is entered by way of these amendments.

In view of the amended claims presented above, the January 3, 2008 Telephonic Interview summarized below, and the following discussion, the Applicants respectfully request the amendments presented herein be entered, and further submit none of the claims now pending in the application are anticipated under the provisions of 35 U.S.C. 102, obvious under the provisions of 35 U.S.C. §103, or noncompliant under the provisions of 35 U.S.C. § 112. Thus, the Applicants assert all of these claims are now in condition for allowance.

### **TELEPHONIC INTERVIEW**

The Applicants and the Applicants' representatives wish to thank the Examiner and the Examiner's Supervisor, James Kramer, for their time and effort during the January 3, 2008 Telephonic Interview. The Examiners and the Applicants' representatives discussed the rejected claims, with emphasis on independent claim 1, in view of the cited references, e.g., U.S. Patent No. 6,199,050, issued March 6, 2001, to *Alaia, et al.*, the Examiner's Official Notice and, as asserted by the Examiner, the "Disclosed Prior Art." The Applicants' representatives and the Examiners discussed proposed amendments to the claims, with independent claim 1 reviewed as the representative claim.

Specifically, the Applicants' representatives proposed amendments as shown above, as modified by the Examiners. The Applicants wish to thank the Examiners for their suggested modification to the Applicants' proposed amendments -- adding the term "historical" to the Applicants' proposed amendments -- and have incorporated same into

the respective claims. The Applicants' have not replaced the term "customer" with "bidder", as recommended by Examiner Borlinghaus, because "customer" is the correct terminology. In certain instances, though, the Applicants did replace the term "customer" with "vendor" where necessary to be consistent with the scope and meaning of the remaining elements of the claims.

The Telephonic Interview resulted in an agreement as to proposed amendments. The Examiners suggested, and the Applicants agree, that the currently amended claim language (see above) distinguishes the claimed invention over the cited references. Therefore, favorable reconsideration and issuance of all claims is respectfully requested.

## **REJECTIONS**

### **35 U.S.C. § 103(a) – Claims 1 and 3 – 48**

Claims 1 and 3 – 48 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,199,050, issued March 6, 2001, to *Alaia, et al.* (hereinafter "*Alaia*") in view of the Applicants' specification, pp. 1 – 5 (hereinafter "*Disclosed Prior Art*") and the Examiner's Official Notice. The Applicants respectfully disagree in view of the following arguments.

*Alaia* generally discloses a method and system for conducting electronic auctions utilizing a dynamic lot closing extension feature to avoid collisions in closing times of multiple lots. See Abstract. *Alaia* further discloses utilizing algorithmic and manual methods of regulating the incoming bids on a particular lot. See *gen.* Col. 8, l. 59 – Col. 10, l. 32. These regulations include: pausing an auction when disruption occur without prejudicing existing bidding activity; allowing bidder-determined line item decision rules so individual line items may be provided with a ceiling or floor within an entire lot; and detecting, preventing, and removing erroneous bids in a particular auction through particular confirmation and "failsafe" rules. See *Id.*

However, *Alaia*, either or alone or in combination with the Examiner's Official Notice, fails to disclose each and every element of newly amended independent claims 1, 9, 16, 28 or 39. Specifically, for example, none of the cited references, either alone or in combination, disclose: 1) "wherein the estimated market price is formed as a function of

historical pricing information not obtained via the online reverse auction environment, and wherein the estimated market price is not known to a vendor of the online reverse auction environment”; or 2) “updating the database, after closing the online reverse auction environment. . .” as recited by each of the independent claims or a variant form of such limitations.

The Examiner contends that the “estimated market price,” as claimed by the Applicants, is disclosed by *Alaia* as the “current lowest or best bid, termed ‘Market Bid.’” *Office Action*, p. 4, ll. 8 – 9. However, in view of the agreed-to amendments, such a contention is now considered moot. The description of an “estimated market price” as clearly recited throughout the Applicants’ specification, and now as distinctly claimed in the newly amended independent claims, clearly distinguishes the claims from that disclosed in *Alaia*. For example, the specification provides in part (p. 5, l. 24 – p. 6, l. 7):

To help the user determine when to put its telecommunications traffic up for bid, the system preferably includes an RFP timing module that compares the user’s actual rates to estimated market rates listed in a Best of Class (BOC) database. The BOC database includes commodity designations representing various classes of service and estimated market rate stored in association with the commodity designations. The estimated market rates can be kept current by manual updates or by the RFP and market database updating method described below. [...] By comparing the customer’s actual telecommunications rates to the estimated market rates of the BOC database, the system facilitates efficient timing of the RFP process. The RFP timing module can be configured to notify the user when the projected cost savings attributable to current reductions in service rates is likely to outweigh the expense of the RFP and contract negotiation process.

Thus, while the “estimated market price” may be “updated” during a particular auction, it is initially formed as a function of historical pricing information not obtained via the online reverse auction environment and is not known to a vendor of the online auction environment.

Upon thorough review of the cited references, the Applicants assert no reference, alone or in combination, discloses, suggests or teaches a concept remotely related to the Applicants’ claimed “estimated market price” among other elements, as those elements are

now claimed. Thus, the Applicants' assert no *prima facie* case of obviousness can be made because the references, either alone or in combination, fail to teach or suggest all the claimed limitations.

The remaining rejected claims are similarly neither anticipated nor obviated, as they are dependent, either directly or indirectly, on one of the independent claims and include further limitations not disclosed in the cited references. Thus, the Applicants kindly request the present rejection be withdrawn and the claims allowed.

### **35 U.S.C. § 103(a) – Claims 49 – 71**

Claims 49 – 71 stand rejected under 35 U.S.C. § 103(a) as obvious over *Disclosed Prior Art* in view of *Alaia* and the Examiner's Official Notice. The Applicants respectfully disagree in view of the following arguments.

The Applicants had previously cancelled claims 50 and 66, and have currently amended independent claims 49 and 60 to further distinguish the claims over the cited references, as was agreed to during the January 3, 2008 Telephonic Interview. As such, newly amended independent claims 49 and 60 now recite an “estimated market price” wherein the estimated market price is formed as a function of historical pricing information not obtained via the online reverse auction environment, and wherein the estimated market price is not known to a vendor of the online reverse auction environment, among other limitations.

The Applicants re-assert the arguments discussed above with respect to the rejection of claims 1, and 3 – 48 are applicable to claims 49 and 60 as amended, and are incorporated herein as if fully discussed. Therefore, the Applicants assert that the claims are neither anticipated nor obvious in view of newly amended independent claims 49 and 60.

The remaining rejected claims are similarly neither anticipated nor obviated, whereas they are dependent, either directly or indirectly, on one of the independent claims. Thus, the Applicants kindly request the present rejection be withdrawn and the claims allowed.

### CONCLUSION

In view of the foregoing, the Applicants submit none of the claims presently in the application are anticipated under the provisions of 35 U.S.C. § 102 or obviated under the provisions of 35 U.S.C. § 103. Consequently, the Applicants believe all claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issuance are earnestly solicited.

If, however, the Examiner believes any unresolved issues still exist or if, in the opinion of the Examiner, a telephone conference would expedite passing the present application to issue, the Examiner is invited to call the undersigned agent directly at 732-275-3101 or the office of the undersigned agent at 732-275-3100 so appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

MALDJIAN & FALLON LLC

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